

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:01CR3027
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
CASEY L. BROWN,)	
)	
Defendant.)	

This matter is before the court upon a motion filed by Casey L. Brown captioned “Petitioner’s Motion Challenging Only District Court’s Previous Ruling on It’s [sic] Imposition of an Unlawfully Contrived Sentence Based on the Conviction.” (Filing 116.) The motion recites that it is made pursuant to Gonzalez v. Crosby, ___ U.S. ___, 125 S. Ct. 2641 (2005); Fed R. Civ. P. 60(b)(6); and Fed. R. Crim. P. 52(b).

Brown has previously filed a 28 U.S.C. § 2255 petition. His claim of ineffective assistance of counsel was denied on the merits. (Filing 88.) Requests for a certificate of appealability were denied by this court and the Court of Appeals. (Filings 91 and 98.) Later, Brown filed an application for leave to file a second or successive petition with the Court of Appeals (filing 113), seeking to raise a confrontation clause claim and a Booker¹ claim. (See Filing 116 at 2.) His application was denied. (Filing 115.)

The motion in filing 116 seeks relief from judgment and seeks to advance substantive claims: the ineffective assistance of counsel claim previously denied on the merits and the claims Brown sought to raise in a successive petition. It is a

¹United States v. Booker, ___ U.S. ___, 125 S. Ct. 738 (2005).

“second or successive habeas petition” within the meaning of 28 U.S.C. § 2255 and as such may not be filed unless precertified by the Court of Appeals in the manner provided in 28 U.S.C. § 2244. Neither Gonzalez, Fed. R. Civ. P. 60(b), or Fed R. Civ. P. 52(b) provides authority for Brown to bring this successive petition without prior certification by the Court of Appeals.

For the foregoing reasons,

IT IS ORDERED that the motion in filing 116 is denied.

September 14, 2005.

BY THE COURT:

s/Richard G. Kopf
United States District Judge